

Nicholas F. Wasdin (*Pro Hac Vice* forthcoming)  
**DWOSKIN WASDIN LLP**  
110 N. Wacker  
Chicago, Illinois 60606  
Tel.: 312-343-5361  
nwasdin@dwowas.com

Robert G. Loewy (SBN 179868)  
**LAW OFFICES OF ROBERT G. LOEWY, P.C**  
20 Enterprise, Suite 310  
Aliso Viejo, California 92656  
Tel.: 949-468-7150  
rloewv@rloewv.com

*Counsel for Plaintiff and the Proposed Classes*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JENNIFER ENDRES, individually and on )	Case No.:
behalf of all others similarly situated, )	
Plaintiff, )	CLASS ACTION COMPLAINT
vs. )	DEMAND FOR JURY TRIAL
FITON INC, )	
Defendant. )	
)	
)	
)	

1 Jennifer Endres (“Plaintiff”), individually and on behalf of all others similarly  
2 situated, brings this Class Action Complaint against FitOn Inc. (“FitOn” or  
3 “Defendant”) for violations of the Video Privacy Protection Act, 18 U.S.C. § 2710  
4 (“VPPA”), and upon personal knowledge as to Plaintiff’s own conduct, and on  
5 information and belief as to all other matters, including based on an investigation by  
6 counsel, alleges as follows:

7 **I. NATURE OF THE ACTION**

8 1. This is a class action against FitOn for violating Plaintiff’s privacy rights  
9 under federal law by knowingly disclosing consumers’ personally identifiable  
10 information, including “information which identifies a person as having requested or  
11 obtained specific video materials or services from a video tape provider” (“PII”),  
12 through the use of a hidden tracking code created by Meta Platforms, Inc. (formerly  
13 known as Facebook) (“Meta”) and integrated by FitOn into FitOn’s online video  
14 service platforms.

15 2. FitOn owns and operates a subscription-based online video streaming  
16 platform called “fitonapp.com” and related applications. FitOn subscribers can request  
17 and watch hundreds of fitness and wellness videos from their computer or mobile  
18 device.

19 3. Unbeknownst to Plaintiff and members of the Class (defined below),  
20 FitOn knowingly and intentionally discloses its users’ video viewing history every time  
21 they request or watch video content on fitonapp.com.

22 4. FitOn shares its customers’ PII with Meta for advertising and marketing  
23 purposes via certain “pixels” on their website.

24 5. The “Meta Pixel” is a hidden tracking code incorporated into the FitOn  
25 platform that sends Meta time-stamped, personally-identifiable records of consumers,  
26 such as Plaintiff and Class members, including information which identifies a person  
27 as having requested or obtained specific video materials or services from FitOn.

28 6. Meta combines this personal information with other information about

1 each consumer gathered from other sources and uses it for marketing and advertising  
2 purposes.

3 7. FitOn is a “video tape service provider” under the VPPA.

4 8. The VPPA prohibits “video tape service providers,” such as FitOn, from  
5 knowingly disclosing “information which identifies a person as having requested or  
6 obtained specific video materials or services from a video tape service provider” absent  
7 informed, written consent and opt-out rights, which FitOn does not obtain or provide.

8 9. FitOn violates the VPPA by sharing its users’ video viewing histories with  
9 Meta via the Meta Pixel.

10 10. Accordingly, Plaintiff brings this Class Action Complaint for legal and  
11 equitable remedies to compensate Plaintiff and members of the Class for Defendant’s  
12 statutory violations and to end Defendant’s practice of knowingly disclosing FitOn  
13 users’ highly sensitive video viewing histories to third parties.

## 14 **II. JURISDICTION AND VENUE**

15 11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because  
16 Plaintiff’s claims arise under the Video Privacy Protection Act, 18 U.S.C. § 2710.

17 12. This Court also has subject matter jurisdiction under 28 U.S.C. § 1332(d)  
18 because this is a class action in which the aggregate amount in controversy for the  
19 proposed Class exceeds \$5,000,000, and at least one member of the Class is a citizen  
20 of a state different from that of Defendant.

21 13. Venue is appropriate in this District pursuant to 28 U.S.C. §1391 because,  
22 upon information and belief, (a) Defendant’s principal place of business is located at  
23 8605 Santa Monica Blvd., #16613, West Hollywood, California 90069, (b) Defendant  
24 does business in this District, (c) a substantial part of the events or omissions giving  
25 rise to the claim occurred in or emanated from this District, and (d) this Court has  
26 personal jurisdiction over Defendant.

## 27 **III. PARTIES**

28 14. Plaintiff Jennifer Endres is a resident of Bakersfield, California. Plaintiff

1 subscribed to FitOn from June 2023 to September 2023. Plaintiff paid for her  
2 subscription and also purchased additional video content from FitOn. Plaintiff has had  
3 a Facebook account for more than two years. During the relevant time period, Plaintiff  
4 requested and watched videos on FitOn while logged into her Facebook account. By  
5 doing so, Plaintiff's FitOn video viewing history was disclosed to third parties,  
6 including Meta, pursuant to the systematic process described herein. Plaintiff did not  
7 provide express written consent—in the form required by the VPPA—to the disclosure  
8 of her video viewing history.

9 15. FitOn is a Delaware corporation with its principal place of business in  
10 West Hollywood, California.

#### 11 **IV. GENERAL FACTUAL ALLEGATIONS**

##### 12 **A. The Video Privacy Protection Act.**

13 16. The VPPA generally prohibits the knowing disclosure of a customer's  
14 video viewing history without the informed, written consent of the customer in a form  
15 "distinct and separate from any form setting forth other legal or financial obligations."  
16 Under the statute, the Court may award actual damages (but not less than liquidated  
17 damages of \$2,500.00), punitive damages, equitable relief, and attorney's fees.

18 17. The VPPA was initially passed in 1988 for the explicit purpose of  
19 protecting the privacy of individuals' and their families' video rental, purchase and  
20 viewing data. Leading up to its enactment, members of the United States Senate warned  
21 that "[e]very day Americans are forced to provide to businesses and others personal  
22 information without having any control over where that information goes." S. Rep. No.  
23 100-599 at 7-8 (1988).

24 18. Senators at the time were particularly troubled by disclosures of records  
25 that reveal consumers' purchases and rentals of videos and other audiovisual materials.  
26 As Senator Patrick Leahy and the late Senator Paul Simon recognized, records of this  
27 nature offer "a window into our loves, likes, and dislikes," such that "the trail of  
28 information generated by every transaction that is now recorded and stored in

1 sophisticated record-keeping systems is a new, more subtle and pervasive form of  
2 surveillance.” S. Rep. No. 100-599 at 7-8 (1988) (statements of Sens. Simon and  
3 Leahy, respectively).

4 19. In proposing the Video and Library Privacy Protection Act (later codified  
5 as the VPPA), Senator Leahy stated that “[i]n practical terms our right to privacy  
6 protects the choice of movies that we watch with our family in our own homes. And it  
7 protects the selection of books that we choose to read.” 134 Cong. Rec. S5399 (May  
8 10, 1988). Thus, the personal nature of such information, and the need to protect it from  
9 disclosure, is the inspiration of the statute: “[t]hese activities are at the core of any  
10 definition of personhood. They reveal our likes and dislikes, our interests and our  
11 whims. They say a great deal about our dreams and ambitions, our fears and our hopes.  
12 They reflect our individuality, and they describe us as people.” *Id.*

13 20. While these statements rang true in 1988 when the VPPA was passed, the  
14 importance of legislation like the VPPA in the modern era of data mining from online  
15 activities is more pronounced than ever before. During a recent Senate Judiciary  
16 Committee meeting, “The Video Privacy Protection Act: Protecting Viewer Privacy in  
17 the 21st Century,” Senator Leahy emphasized the point by stating that while “it is true  
18 that technology has changed” over the years, “we have to be faithful to our fundamental  
19 right to privacy and freedom,” and “[t]oday the social networking, video streaming, the  
20 ‘cloud,’ mobile apps and other new technologies have revolutionized the availability  
21 of Americans’ information.”<sup>1</sup>

22 21. In this case, Defendant deprived Plaintiff and the Class members of that  
23 right by knowingly and systematically disclosing their video viewing histories to  
24 \_\_\_\_\_

25 <sup>1</sup> See Committee on the Judiciary, Subcommittee on Privacy, Technology and the Law,  
26 The Video Privacy Protection Act: Protecting Viewer Privacy in the 21st Century,  
27 Senate Judiciary Committee Subcommittee on Privacy, Technology and the Law,  
28 <https://www.govinfo.gov/content/pkg/CHRG-112shrg87342/html/CHRG-112shrg87342.htm> (last visited October 20, 2023).

1 unauthorized third parties without obtaining informed written consent, as explained  
2 herein.

3 **B. FitOn Video Platform**

4 22. FitOn owns and operates the FitOn platform, which includes their flagship  
5 website, fitonapp.com, and the “FitOn” mobile application.

6 23. FitOn offers a catalog of fitness and wellness courses and content for  
7 consumers to watch and to motivate them to reach their fitness and wellness goals over  
8 time.

9 24. FitOn advertises itself as helping consumers “[t]ake [their] wellness to the  
10 next level,” including through: (a) “Fitness” to “[b]e more active and to reach [their]  
11 goals with custom fitness programs;” (b) “Mindfulness” to “[r]educate stress and be more  
12 mindful with meditation and yoga classes;” (c) “Nutrition” to “[e]at healthier with  
13 personalized meal plans and 500+ exclusive recipes;” and (d) “Motivation” to “[m]ake  
14 working out more fun and rewarding with challenges and the support of [their] friends.”

15 25. FitOn provides an online fitness community and related products,  
16 services, content, and features.

17 26. FitOn users get access to “[e]xclusive guided courses” that “target[] health  
18 and chronic conditions including diabetes, heart health, MSK, fall prevention, sleep  
19 and more.”

20 27. FitOn invites consumers to “[j]oin [their] 15 million+ member  
21 community.”

22 28. To subscribe to FitOn, users are required to sign-up.

23 29. FitOn users are required to register by inputting their name and email  
24 address and creating a password.

25 30. FitOn then sends users a verification email called a “[m]agic sign-in link”  
26 with a code that expires within 24 hours.

27 31. The sign-up process includes recommended video content, such as multi-  
28 week fitness and nutrition programs, that are only accessible to users after signing-up.

1           32.   FitOn users can “favorite” programs or courses, receive advice, and invite  
2 friends and others to join FitOn.

3           33.   FitOn users are encouraged to join personalized, multiweek “challenges.”

4           34.   FitOn user activity is tracked with a calendar. Users whose activity merit  
5 positive reinforcement are encouraged with feedback, such as acknowledging that a  
6 user has hit a “streak.” User calorie counts, minutes logged in workout videos, and  
7 total workouts are all logged and prominently displayed to motivate and encourage  
8 users to continue using the platform.

9           35.   Users receive periodic emails from FitOn that are intended to promote use  
10 of the platform.

11          36.   The account allows users to access FitOn’s exclusive and/or restricted  
12 content, products, and services, and to join the FitOn community. The account  
13 establishes a relationship with FitOn. FitOn uses the account to establish a  
14 commitment between the user and the platform so that the user is motivated to continue  
15 using the platform to achieve their fitness and wellness goals, including over an  
16 extended (e.g., multi-week) period of time. FitOn uses the account to establish an  
17 association among new FitOn users and other members of the community that FitOn  
18 cultivates. FitOn provides users with many opportunities to express association with  
19 the platform through sharing video content and inviting others to join the community.

20          37.   The version of FitOn that is accessible to users with an account is not  
21 identical to the version of FitOn that is available to those who merely access the website  
22 through general internet browsing. Similarly, the content of electronic services  
23 available to accountholders is different than the information that is available to those  
24 who merely access the website through general internet browsing.

25          38.   Upon information, FitOn classifies users who have accounts differently  
26 than those who merely access the website through general internet browsing. Indeed,  
27 FitOn classifies them as accountholders and/or subscribers and is able to monetize the  
28 relationship with accountholders in a manner that it is unable to do with those who



1 merely access the website through general internet browsing.

2 39. Upon information and belief, access through an account by a user  
3 generates value for FitOn that mere website access by general internet browsers does  
4 not.

5 40. FitOn also offers a “Pro” version for a fee and other content for payment.  
6 The Pro version offers additional features.

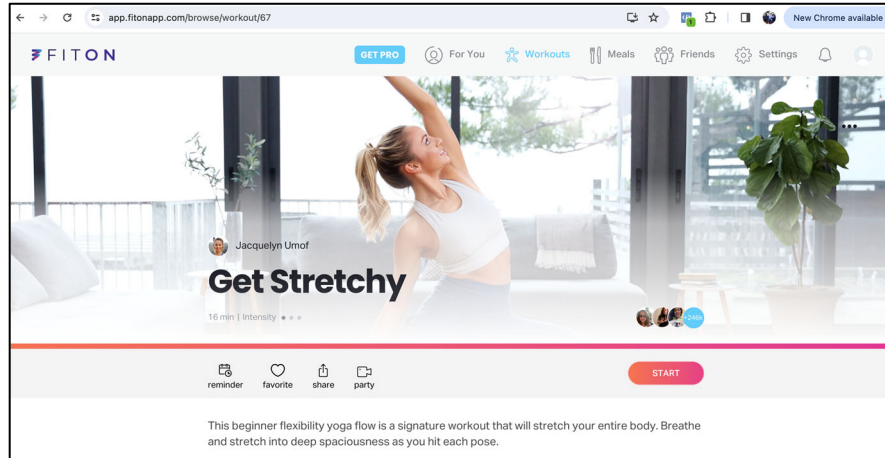
7 41. After a user creates an account and begins using the FitOn platform, FitOn  
8 collects a wide variety of additional sensitive information about its users, including IP  
9 address, mobile device unique ID, user location, browser or device type, browser  
10 version, the time and date a user visits the FitOn platform, pages visited, the time spent  
11 on those pages, unique device identifiers, and other diagnostic data. FitOn also uses  
12 technologies (e.g., cookies) to store and/or access information on users’ computers or  
13 devices in order to process personal data or browsing history. Cookies are small text  
14 files that are used as identifiers. FitOn transfers these text files to the hard drive of  
15 users’ computers via the users’ web browser and can read them during the users’ use  
16 of the FitOn platform. The cookies allow FitOn to track information regarding how  
17 users use the FitOn platform, and allow FitOn to directly or indirectly identify the  
18 individual users. In that way, FitOn collects information that the user’s browser sends  
19 whenever the user visits FitOn’s service or when the user accesses the service by or  
20 through a mobile device. Additionally, while using the FitOn application on a mobile  
21 device, FitOn may collect, among other things: (a) information from the user’s device’s  
22 phone book (contacts list); and (b) pictures and other information from the user’s  
23 device’s camera and photo library.

24 42. FitOn users can request and watch specific video materials through the  
25 FitOn platform, including on fitonapp.com.

26 43. After a user requests specific video materials from FitOn, FitOn hosts and  
27 delivers prerecorded video content for the specific video content requested.

28 44. The following is an example of the video content available on FitOn.





45. The videos that FitOn hosts on its website are integral to its business model of providing fitness and wellness content to consumers.

### C. The Meta Pixel.

46. The Meta Pixel is a “web beacon” that is used to track and disclose individuals’ online activities to Meta.

47. Meta is an advertising company that sells advertising space on the social media platform it operates, including Meta and Instagram.

48. Meta calls itself a “real identity platform,” meaning users are allowed only one account and must share the name they go by in everyday life. Users must provide Meta their first and last name to create an account.

49. Meta’s advertising is based on sophisticated user-categorizing and targeting capabilities that are fueled by the personal data of users of the social media platform and other Internet users.

50. Meta surveils users’ online activities both on and off Meta’s own websites and apps, which allows Meta to make highly personal inferences about users, such as about their interests, behavior, and connections.

51. Meta compiles information it obtains and infers about internet users and uses it to identify personalized audiences likely to respond to particular advertisers’ messaging.

52. The Meta Pixel is a free and publicly available piece of code that Meta

1 allows third-party website developers to install and integrate into their websites.

2 53. The code that is used to execute the Pixel functions is written into the base  
3 code of the website.

4 54. The Meta Pixel is installed on a website as a first-party cookie.

5 55. Cookies are small pieces of text used to store information on web  
6 browsers. They store and receive identifiers and other information on computers,  
7 phones and other devices, and they can serve a number of different functions, such as  
8 personalizing content and tailoring and measuring ads.

9 56. A “first-party cookie option” is designed to circumvent improvements in  
10 how web browsers block third-party cookies (a primary means by which Meta  
11 historically tracked people across the web). Being embedded in websites as a first-  
12 party cookie, rather than as a third-party cookie, causes users’ browsers to treat that  
13 Pixel as though it is offered by the website they are visiting, rather than by Meta, a third  
14 party.

15 57. When the Pixel is embedded in a website as a first-party cookie, the third-  
16 party cookie blocking functions of modern web browsers do not inhibit the Meta  
17 Pixel’s collection of data.

18 58. Because of the Pixel design, the Pixel causes users’ browsers to treat that  
19 Pixel as though it is offered by the website itself.

20 59. From a technological perspective, the Pixel is a part of the code of the  
21 website, and a users’ browser understands the Pixel to be a part of the website itself,  
22 not a third-party.

23 60. The Meta Pixel is configured to capture a substantial amount of  
24 information by default.

25 61. Since 2015 when it was introduced, the Meta Pixel has transmitted HTTP  
26 header information, including the URL of each page visited on a website, by default.  
27 HTTP Headers collect “IP addresses, information about the web browser, page  
28 location, document, referrer and persons using the website.”

1           62. Meta also automatically collects “Pixel-specific Data,” which includes  
2 “the Pixel ID and cookie.”

3           63. For Meta account-holders, “Pixel-specific Data” includes the “c\_user”  
4 cookie, which allows Meta to link data to a particular Meta account with a user ID (a  
5 “Meta ID”).<sup>2</sup>

6           64. The Meta ID is a unique and persistent identifier assigned to each Meta  
7 user.

8           65. The c\_user cookie is personally identifiable information because it  
9 contains a consumer’s Meta ID. A Meta ID allows anybody—not just Meta—to  
10 identify the individual using a website with a Meta account. If anyone types  
11 www.facebook.com/[MetaID] into a web browser, it will load that individual’s Meta  
12 page, which contains a person’s name and often a person’s photographs and location  
13 information.

14           66. The Meta ID number is a number—just like a social security number,  
15 driver’s license number, or telephone number—which can be used by anyone to  
16 identify an individual.

17           67. A Meta ID is personally identifiable information. Anyone can identify a  
18 Meta profile—and all personal information publicly listed on that profile—by  
19 appending the Meta ID to the end of https://facebook.com.

20           68. A website developer can also choose to track actions taken on their  
21 website with the Meta Pixel, called an “Event.” When a chosen action is taken, the  
22 Meta Pixel is triggered and sends Meta certain data. Meta then attempts to match the  
23 Events it receives to Meta users.

24           69. The developer can then create “Custom Audiences” based on Events and  
25 can target ads on Meta’s platforms.

26           70. Meta associates the information it obtains via the Meta Pixel with other  
27

28  

---

<sup>2</sup> The Meta ID is also sometimes called a Facebook ID. The terms are used synonymously herein.

1 information regarding the user, using personal identifiers that are transmitted  
2 concurrently with other personal information the Pixel is configured to collect.

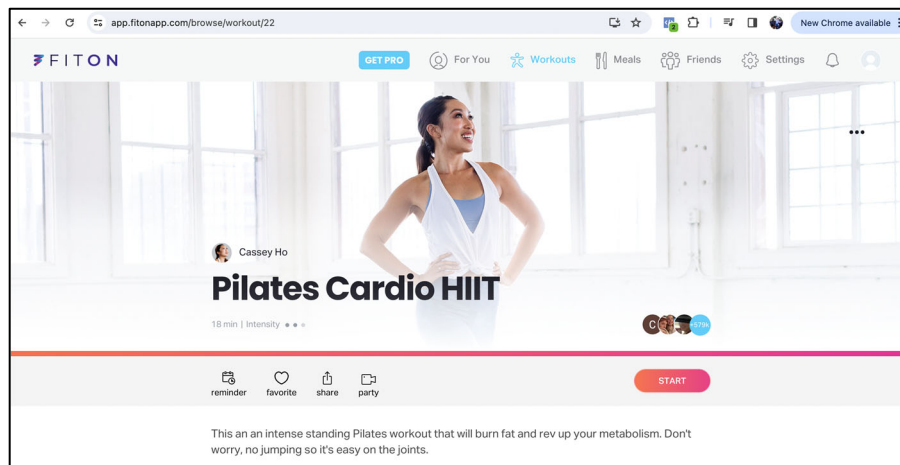
3 71. Meta assigns a unique numerical identifier to each Meta Pixel and  
4 maintains records associating each Pixel with the data it transmits and the website  
5 where it is embedded.

6 **D. FitOn Uses The Meta Pixel To Disclose Viewing Histories To Meta.**

7 72. FitOn has integrated the Meta Pixel throughout its website.

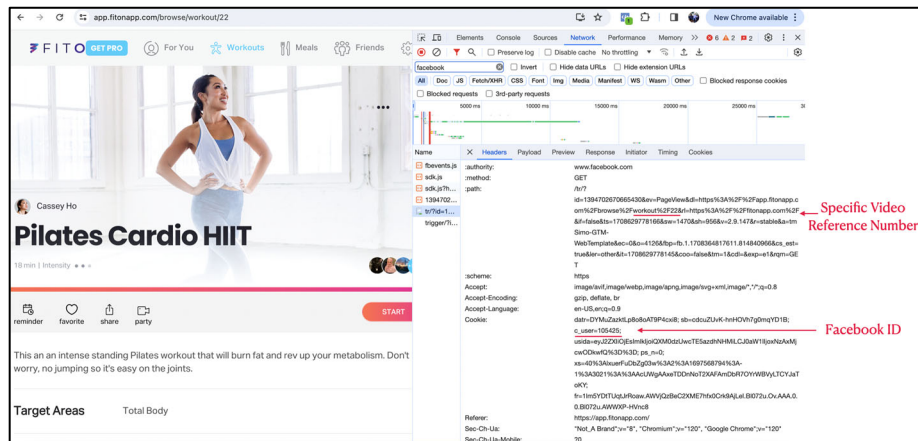
8 73. The numerical identifier associated with the Meta Pixel which currently  
9 operates on fitonapp.com is 1394702670665430.

10 74. Below is a screenshot of what the consumer sees when viewing the FitOn  
11 workout number “22.” The URL identifies the subject matter of the video (i.e., that it  
12 is a “workout” video) and the specific reference number assigned to the video by FitOn  
13 (“22”). In this example, video “22” relates to a category of workout called a high-  
14 intensity interval training (“HIIT”) pilates.

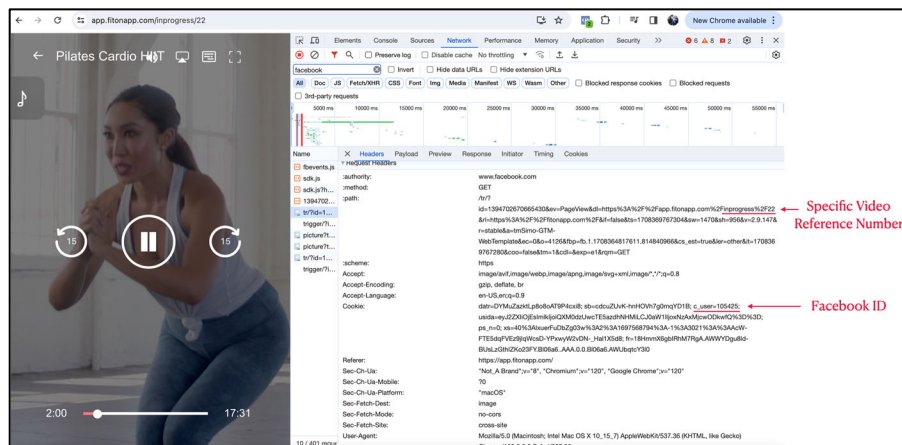


23 75. The specific reference number assigned to videos by FitOn (in the above  
24 example, “22”) are unique identification numbers that an ordinary person can use to  
25 access the entirety of the video content by simply appending the reference number to  
26 the end of the FitOn URL (i.e., [https://app.fitonapp.com/browse/\[subject/numeric-](https://app.fitonapp.com/browse/[subject/numeric-video-title])  
27 [video-title\]](https://app.fitonapp.com/browse/[subject/numeric-video-title])). Thus, the video reference number (a) identifies the specific video, and (b)  
28 can be used to by an ordinary person to access the entirety of the referenced video.

76. The below screenshot shows that FitOn shares with Meta via the Meta Pixel data that is tied to unique identifiers that identify specific consumers with specific video content. The recipients of the data—e.g., Meta—receive both the specific video content requested (workout “22”) *and* a unique individual identifier (the individual’s Facebook ID), all as part of a single data transmission, as shown in the following screen shot.

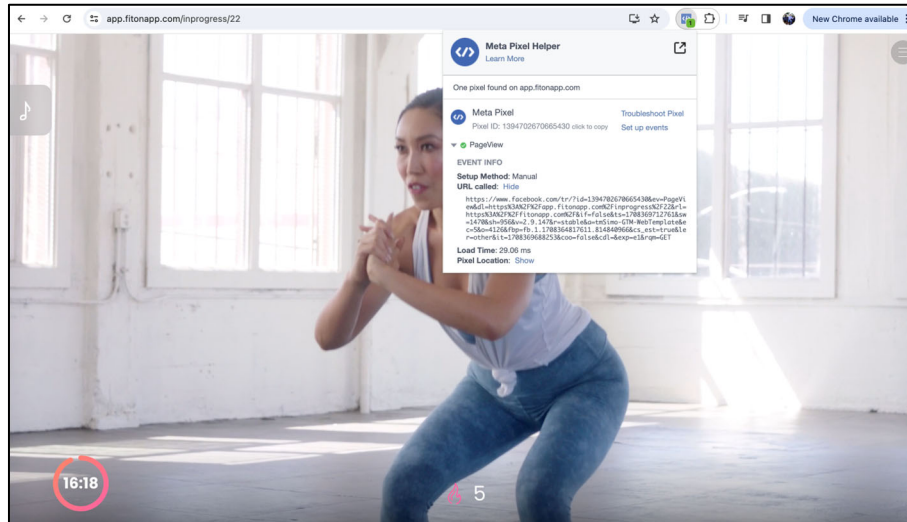


77. When a user begins watching the video, the end of FitOn URL transitions from “browse/workout/22” to “inprogress/22,” thus indicating that the user has transitioned from requesting to obtaining the video content at issue. The below screenshot shows that FitOn discloses this data to Meta via the Meta Pixel, thus telling Meta that a specific FitOn user has begun to watch the specific video content.

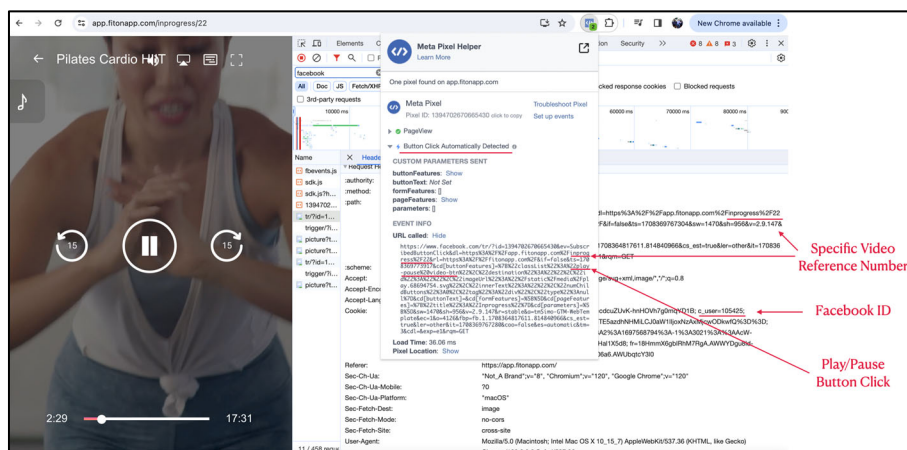


78. FitOn also shares with Meta via the Meta Pixel an “Event” called

“PageView” that tells Meta, among other data points, the page that the consumer is viewing on fitonapp.com. The “PageView” Event tells Meta the specific URL of the page the consumer visited, including the subject matter and title of the specific video materials or services selected for viewing.



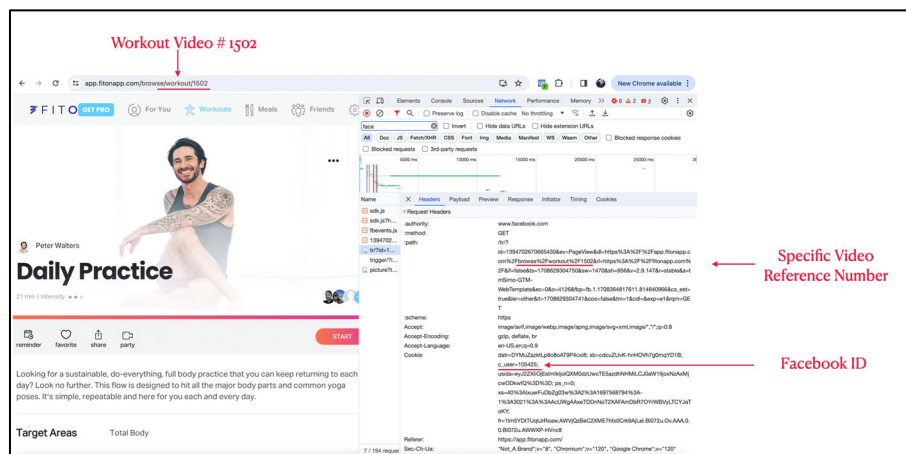
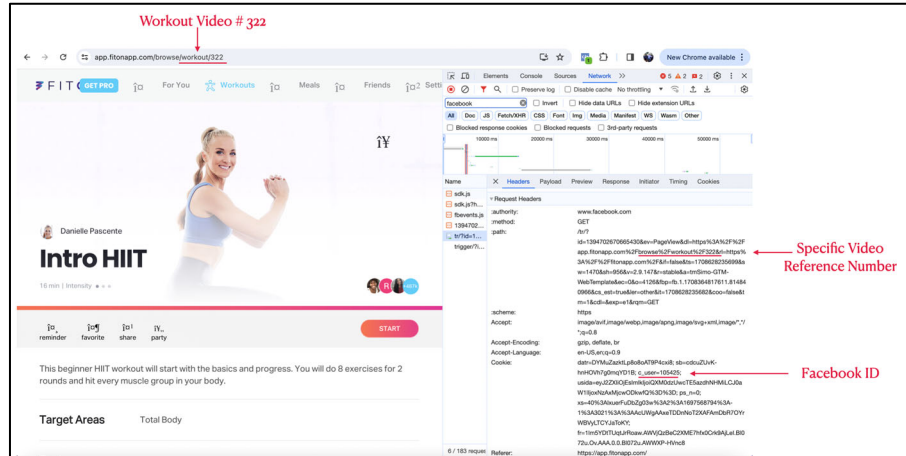
79. FitOn also shares with Meta via the Meta Pixel an “Event” called “Button Click” that tells Meta, among other data points, the buttons that the consumer clicks on while viewing videos on the FitOn platform, including to start or pause the video. Upon information and belief, this data allows Meta to see precisely how and when a specific user viewed and interacted with the specific video content at issue. The screenshot below illustrates that FitOn shares the “Button Click” Event.



80. The above screenshots are but examples for one particular workout video



(workout “22”). The following screenshots are examples of similar data transfers for other videos—here, a different HIIT workout, and a daily yoga video—with different video reference numbers.



81. In addition to the videos available to be viewed as part of a standard user subscription, FitOn also offers additional video content for individual purchase. When a user purchases individual video content from FitOn, the data transferred to Meta via the Meta Pixel discloses the specific video purchase made by the specific FitOn user.

82. On information and belief, at all relevant times FitOn understood the functionality of the Meta Pixel—including that it enabled FitOn to show targeted advertising to its subscribers based on their video viewing history—and thus knew that the Meta Pixel disclosed FitOn users' individual video viewing histories to Meta.

83. Tracking pixels such as the Meta Pixel are not necessary for Defendant to



1 operate FitOn’s video streaming platform and are instead used for the sole purpose of  
2 enabling targeted advertising to Defendant’s benefit.

3 84. As a result of Defendant’s data compiling and sharing practices,  
4 Defendant has knowingly disclosed to Meta and other third parties for its own personal  
5 profit the video viewing histories of FitOn’s users.

6 85. By disclosing its users’ video viewing histories to unauthorized third  
7 parties—which undeniably reveals their identity and the specific video materials they  
8 requested from Defendant’s website—Defendant has intentionally and knowingly  
9 violated the VPPA.

## 10 **V. CLASS ALLEGATIONS**

11 86. Plaintiff brings this action individually and on behalf of all others  
12 similarly situated pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and  
13 23(b)(3), on behalf of the following class (the “Class”):

14 During the fullest period allowed by law, all persons residing  
15 in the United States who: (a) have a FitOn account; and (b)  
16 requested or viewed video content through the FitOn  
17 platform, including through fitonapp.com or the FitOn  
18 application.

19 87. Specifically excluded from the Class are: (1) Defendant, any entity in  
20 which Defendant has a controlling interest, and its past or current legal representatives,  
21 officers, directors, employees, assigns and successors; (2) the Judge to whom this case  
22 is assigned and any member of the Judge’s staff or immediate family; and (3) Class  
23 Counsel.

24 88. Plaintiff reserves the right to modify, change, or expand the Class  
25 definition based upon discovery and further investigation.

26 89. Numerosity: Members of the Class are so numerous and geographically  
27 dispersed that joinder of all members of the Class is impracticable. Plaintiff believes  
28 that there are hundreds of thousands of Class members dispersed throughout the United

1 States. Class Members are readily identifiable from information in Defendant's  
2 records.

3 90. Typicality: Plaintiff's claims are typical of the claims of members of the  
4 Class. Plaintiff and members of the Class were harmed by the same wrongful conduct  
5 by Defendant in that Defendant caused FitOn users' video viewing histories to be  
6 disclosed to third parties without obtaining express written consent in a manner that  
7 complies with the VPPA and without the requisite opt-out rights. Plaintiff's claims are  
8 based on the same legal theories as the claims of other Class members.

9 91. Commonality/Predominance: Common questions of law and fact exist as  
10 to all Class members. These questions predominate over questions that may affect only  
11 individual Class members because Defendant acted on grounds generally applicable to  
12 all Class members. Such common legal or factual questions include, *inter alia*:

- 13 a) whether Defendant disclosed Class members' video viewing histories  
14 to Meta or other third parties;
- 15 b) whether the information Defendant disclosed to Meta or other third  
16 parties constitutes personally identifiable information under the  
17 VPPA;
- 18 c) whether Defendant's disclosure of Class members' video viewing  
19 histories to third parties was knowing under the VPPA;
- 20 d) whether Class members consented to Defendant's disclosure of their  
21 video viewing histories in a manner that complies with the VPPA;  
22 and
- 23 e) whether the Class is entitled to damages or other relief under the  
24 VPPA as a result of Defendant's conduct.

25 92. Adequate Representation: Plaintiff will fairly and adequately protect the  
26 interests of the Class. By prevailing on her own claims, Plaintiff will establish  
27 Defendant's liability as to all Class members. Plaintiff's counsel are unaware of any  
28 conflicts of interest between Plaintiff and absent Class members with respect to the

1 matters at issue in this litigation; Plaintiff will vigorously prosecute the suit on behalf  
2 of the Class; and Plaintiff is represented by attorneys with substantial experience in  
3 complex and class action litigation, including in class action privacy litigation.  
4 Plaintiff's attorneys have investigated the claims in this action and have committed  
5 sufficient resources to represent the Class.

6 93. Injunctive/Declaratory Relief: The elements of Rule 23(b)(2) are met.  
7 Declaratory and injunctive relief is appropriate in this matter. Defendant has acted or  
8 refused to act on grounds generally applicable to Plaintiff and the other Class members,  
9 thereby making appropriate final injunctive relief and declaratory relief, as described  
10 herein, with respect to the Class members as a whole. Unless a class-wide injunction is  
11 issued, Defendant will continue to disclose FitOn user's sensitive video viewing  
12 histories to third parties as described throughout this Complaint, and members of the  
13 Classes will continue to be harmed and denied their rights under the law.

14 94. Superiority: A class action is superior to other available methods for the  
15 fair and efficient adjudication of the controversy. Absent a class action, Class members  
16 would likely find the cost of litigating their claims prohibitively high and would  
17 therefore have no effective remedy at law. Because of the relatively small size of their  
18 individual claims, it is likely that few Class members could afford to seek legal redress  
19 for Defendant's misconduct. Absent a class action, Class Members will continue to  
20 incur damages, and Defendant's misconduct will continue without remedy. Class  
21 treatment of common questions of law and fact would also be a superior method to  
22 multiple individual actions or piecemeal litigation in that class treatment will conserve  
23 the resources of the courts and the litigants and will promote consistency and efficiency  
24 of adjudication. Moreover, the prosecution of separate actions by individual members  
25 of the Class could result in inconsistent or varying adjudications with respect to  
26 individual members of the Class and/or Defendant. The benefits of proceeding through  
27 the class mechanism substantially outweighs any potential difficulties in management  
28 of this class action.

1 95. Plaintiff knows of no difficulty to be encountered in the maintenance of  
2 this action that would preclude its maintenance as a class action.

3 96. Plaintiff reserves the right to seek certification of Rule 23(c)(4) of  
4 common questions related to Defendants' knowledge, conduct, and duties.

5 **VI. CAUSE OF ACTION**

6 **COUNT 1**

7 **Violation Of The Video Privacy Protection Act 18 U.S.C. § 2710**

8 97. Plaintiff incorporates the allegations contained in the above paragraphs of  
9 this complaint as though fully set forth herein.

10 98. The VPPA prohibits a "video tape service provider" from knowingly  
11 disclosing "personally-identifying information" concerning any consumer to a third-  
12 party without the "informed, written consent (including through an electronic means  
13 using the Internet) of the consumer." 18 U.S.C § 2710.

14 99. As defined in 18 U.S.C. § 2710(a)(4), a "video tape service provider" is  
15 "any person, engaged in the business, in or affecting interstate commerce, of rental,  
16 sale, or delivery of prerecorded video cassette tapes or similar audiovisual materials."

17 100. Defendant is a "video tape service provider" as defined in 18 U.S.C. §  
18 2710(a)(4) because it engaged in the business of delivering prerecorded video materials  
19 to FitOn users.

20 101. Defendant's business includes delivering FitOn users' specific video  
21 content hosted on the FitOn platform.

22 102. As defined in 18 U.S.C. § 2710(a)(3), "personally-identifiable  
23 information" is defined to include "information which identifies a person as having  
24 requested or obtained specific video materials or services from a video tape service  
25 provider."

26 103. Defendant knowingly caused information which identifies Plaintiff and  
27 Class members as having requested or obtained specific video materials or services to  
28 be disclosed to third parties. This information constitutes personally identifiable

1 information under 18 U.S.C. § 2710(a)(3) because it identified Plaintiff and each Class  
2 member to third parties as an individual who requested or obtained specific video  
3 materials on the FitOn platform.

4 104. As defined in 18 U.S.C. § 2710(a)(1), a “consumer” means “any renter,  
5 purchaser, or subscriber of goods or services from a video tape service provider.” As  
6 alleged in the preceding paragraphs, Plaintiff is a “consumer” under the VPPA.

7 105. Defendant failed to obtain informed, written consent from Plaintiff and  
8 other Class members for the disclosures described above in a manner that satisfies 18  
9 U.S.C. § 2710(b)(2)(B).

10 106. Defendant knew that Plaintiff’s and Class members’ personally-  
11 identifiable information protected under the VPPA was disclosed to third parties,  
12 because, *inter alia*, Defendant chose, programmed, and intended for those third parties  
13 to receive the video content requested or obtained and the digital subscribers’ specific  
14 Facebook ID.

15 107. By disclosing Plaintiff’s and the Class’s personally-identifiable  
16 information protected under the VPPA, Defendant violated Plaintiff’s and the Class  
17 members’ statutorily protected right to privacy in their video-watching habits. *See* 18  
18 U.S.C. § 2710(c).

19 108. As a result of the above violations, Defendant is liable to the Plaintiff and  
20 other Class members for actual damages related to their loss of privacy in an amount  
21 to be determined at trial or alternatively for “liquidated damages not less than \$2,500”  
22 per violation. Under the statute, Defendant is also liable for reasonable attorney’s fees,  
23 and other litigation costs, injunctive and declaratory relief, and punitive damages in an  
24 amount to be determined by a jury, but sufficient to prevent the same or similar conduct  
25 by the Defendant in the future.

## 26 **VII. PRAYER FOR RELIEF**

27 Plaintiff, individually and on behalf of the other members of the proposed Class,  
28 respectfully requests that the Court enter judgment against Defendant as follows:

1 A. An order certifying the proposed Class pursuant to Federal Rules of Civil  
2 Procedure 23(a), (b)(2), (b)(3), and/or (c)(4), designating Plaintiff as the named  
3 representative of the Class, designating the undersigned as Class Counsel, and  
4 making such further orders for the protection of Class members as the Court  
5 deems appropriate;

6 B. An order declaring that Defendant's conduct as described herein violates  
7 the VPPA, 18 U.S.C. § 2710(c)(2)(D);

8 C. Awarding to Plaintiff and each Class member at least \$2,500.00 per  
9 violation, as provided by the VPPA, 18 U.S.C. § 2710(c)(2)(A);

10 D. Awarding punitive damages, as warranted, in an amount to be determined  
11 at trial, 18 U.S.C. § 2710(c)(2)(B);

12 E. Awarding restitution and all other forms of equitable monetary relief, 18  
13 U.S.C. § 2710(c)(2)(D);

14 F. Awarding attorneys' fees and costs, as allowed by law, 18 U.S.C. §  
15 2710(c)(2)(C);

16 G. Awarding pre-judgment and post-judgment interest, as provided by law;

17 H. An order enjoining Defendant from continued violations of the VPPA as  
18 alleged herein, 18 U.S.C. § 2710(c)(2)(D);

19 I. Such other relief as may be appropriate under the circumstances.

20 **VIII. JURY DEMAND**

21 Plaintiff hereby demands a trial by jury.

22  
23 Dated: February 27, 2024

**DWOSKIN WASDIN LLP**  
**LAW OFFICES OF ROBERT G. LOEWY, P.C**

24  
25 By: /s/Robert G. Loewy  
26 Robert G. Loewy

27 *Counsel for Plaintiff and the Proposed Classes*  
28